

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

FRANK D. LACEY, JR.,

Plaintiff,

v.

Case No. 03-CV-75023-DT

DOORSTEP SHELTER SUBSIDIARY OF MES,
INC. and JON P. RUTHERFORD,

Defendants.

**OPINION AND ORDER DENYING PLAINTIFF'S "MOTION FOR SANCTIONS
PURSUANT TO FED. R. CIV. P. 37"**

Before the court is Plaintiff's "Motion For Sanctions Pursuant to Fed. R. Civ. P. 37." For the reasons set forth below, the court will deny Plaintiff's motion.

Plaintiff previously brought claims related to sex and race discrimination that he allegedly experienced, which the court determined to be unsustainable in the face of Defendants' motions for summary judgment. (1/3/05 Order; 2/11/05 Order.) Plaintiff's retaliation claim is now before the court [Dkt. # 80]. In his motion, Plaintiff alleges that "Defendants did not provide responses to seven alleged production requests [that Magistrate Judge Pepe stated that he was going to order, but did not include in the court order that he issued]. The Defendants participated in the hearing, argued vehemently that these documents should not be produced but, agreed they would provide these documents."¹ (Pl.'s Mot. at 2.) Plaintiff also cites several instances where

¹ Plaintiff's submission to the court of an audio tape recording of the telephone conference that Magistrate Judge Pepe conducted with the parties is improper and the court will not review it. The audio tape will be stricken from the record of this case.

Defendants replied that Plaintiff's interrogatories targeted irrelevant information, that Defendants previously provided the information to Plaintiff, and that Defendants no longer possessed the information. Defendants acknowledge that they objected to many of Plaintiff's requests contending that they were either irrelevant to Plaintiff's retaliation claim, were duplicate requests, or that the documents are no longer in existence. (Defs.' Resp. at 3-5.) Plaintiff has not presented evidence that demonstrates that Defendants have not complied with his discovery requests. The court notes that Defendants' inability to provide responses *satisfactory to Plaintiff* and Defendants' responses that certain documents are missing when Plaintiff expects them to exist does not necessarily implicate bad faith on the part of Defendants, nor require sanctions pursuant to Fed. R. Civ. P. 37(4). Accordingly,

IT IS ORDERED that Plaintiff's "Motion for Sanctions Pursuant to Fed. R. Civ. P. 37" [Dkt. # 94] is DENIED.

IT IS ALSO ORDERED that Plaintiff's audio tape recording of the telephone conference that Magistrate Judge Pepe conducted with the parties is stricken from the record.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 3, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 3, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
(313) 234-5522